

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case Nos. 08-13555 (JMP)

In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC., et al.

Debtors.

United States Bankruptcy Court

One Bowling Green

New York, New York

February 17, 2009

10:02 AM

B E F O R E :

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

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2 Hearing Re LBHI's Motion, Pursuant to Sections 105(a) and 363
3 of the Bankruptcy Code, for Authorization to Fund a Capital
4 Contribution to Woodlands Commercial Bank

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6 HEARING re LBHI's Motion, Pursuant to Sections 105(a) and 363
7 of the Bankruptcy Code and Bankruptcy Rules 9019 and 6004, for
8 Authorization to Increase the Capital Level of Lehman Brothers
9 Bank, FSB through (i)the Settlement of Pending Disputes; and
10 (ii)a Direct Capital Contribution of up to \$15 Million

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P R O C E E D I N G S

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THE COURT: Please be seated. Mr. Perez?

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MR. PEREZ: Good morning, Your Honor. Alfredo Perez
on behalf of the debtors. First, I want to thank you for
hearing this on short notice and on a regular Lehman day. This
is an important motion for the debtor.

7

We're here, Your Honor, on two motions, LBHI's motion
to fund a capital contribution to Woodlands Commercial Bank and
then LBHI's motion to increase the capital level of Lehman Bank
FSB through a settlement of some pending disputes and an
additional direct contribution of up to fifteen million
dollars.

13

Your Honor, the creditors' committee filed a
statement in support of the motion. I don't know if the
Court's had an opportunity to see that. I have an extra copy
if --

17

THE COURT: I read it.

18

MR. PEREZ: Thank you, Your Honor. Your Honor, we
have not received any objections to the relief requested.
These motions have been the subject of extensive discussion
with many, many, many different parties in interest. We were
obviously -- to the extent that there had been an objection, we
were prepared to make an evidentiary showing. And even though
we don't have an objection, Your Honor, Mr. Marsal is here and
he has prepared a presentation to the Court so that the Court

1 understands the importance of the situation and why the debtor
2 is making this business decision to go forward and try to save
3 these two assets.

4 THE COURT: That's fine. And candidly, even in the
5 absence of objection, this is the sort of thing that is so
6 significant that I'm delighted that Mr. Marsal is here and can
7 provide a record in support of the relief requested. And I'm
8 pleased that, in effect, one of the questions I had has been
9 answered which was how are you going to prove this. And you're
10 ready to do that.

11 MR. PEREZ: We are ready, Your Honor. We can
12 certainly do it as -- take his statements in the form of a
13 proffer. If the Court likes to create an evidentiary record,
14 we can certainly do that.

15 THE COURT: Well, Mr. Marsal has addressed the Court
16 before without proffers and without being sworn as a witness.
17 And I accept his statements as the functional equivalent of
18 testimony that he would give from the stand if sworn. And this
19 can be presented in any way that the debtor prefers.

20 MR. PEREZ: Your Honor, we have prepared a dec for
21 the Court and we --

22 THE COURT: I've already read it.

23 MR. PEREZ: Thank you, Your Honor. We did not
24 present it beforehand. Just wanted to have it available here
25 for anybody -- and we have extra copies. But if Mr. Marsal

1 could address the Court, that would be great.

2 THE COURT: Fine. Mr. Marsal?

3 MR. MARSAL: Good morning, Your Honor.

4 THE COURT: Good morning.

5 MR. MARSAL: Your Honor, I'll try and walk you
6 through this as quickly as I'm sure you would want to see it.

7 What we'd just like to make sure you understand on the bank
8 platform front -- again, this is Brian Marsal. I'm the chief
9 executive officer of Lehman Brothers.

10 On page 1 of the presentation, Your Honor, it's an
11 organization chart which outlines the banks, the funding
12 vehicles which Lehman Brothers Holdings, through its wholly
13 owned subsidiary, Lehman Brothers Bank Corp., own. The one on
14 the left, the Utah Bank was in support of the commercial
15 banking operations. The Thrift was in support of the mortgage
16 banking operations residential. That's the subject of today's
17 hearing -- of this aspect of the hearing.

18 THE COURT: What's the box on the right?

19 MR. MARSAL: The box on the right are two other
20 smaller banks that they had -- they were in the process of
21 selling, Your Honor. And those were related to the commercial
22 side of the house. But they're very small and really have no
23 issues today as far as we know.

24 THE COURT: Okay.

25 MR. MARSAL: Turning to page 2 of the presentation,

1 we're going to cover the Utah Bank. We lay out some of the
2 essential issues. The assets of this bank are 5.4 billion, the
3 liabilities, approximately five billion, resulting in an
4 equity -- a realizable equity value of 433 million. This is
5 being done on a mark-to-market basis which means that the value
6 has been really written down significantly. We believe that on
7 a hold to maturity basis, there's significantly more equity
8 here. And we don't see why a hold to maturity would not be
9 relevant as opposed to the -- well, we've taken the more
10 conservative and appropriate accounting policy of marking-to-
11 market which is the 433.

12 On the right, you see the capital levels. That
13 brings us to a capital level of 5.4 percent. Eight percent is
14 required by the FDIC. In order to meet the minimum
15 requirement, a 200 million dollar capital infusion is
16 necessary.

17 Just to focus on the footnotes for a second, the 433
18 million dollars is after a write-down of the muni bonds
19 purchased from Lehman Brothers Inc. for 534 million dollars.
20 And we'll discuss that in more detail as to how that got --
21 that got messed up here. In terms of the other footnotes, the
22 eight percent is the capital adequacy level established by the
23 FDIC. And LBHI -- so the footnote C so you -- read this
24 confusing footnote. We received a PCA, which means a --
25 basically, a notice that we're in serious breach or potential

1 default deficiency situation. When this gets issued as part of
2 any financial plan, the holding company would have to guaranty
3 five percent of whatever the asset base is. So five percent of
4 the asset base would be 272 million dollars. We just wanted to
5 put the FDIC on notice that this 200 million dollars we're
6 putting in is part of that 272 million dollars to not make any
7 mistake. We don't want to be double counted, in other words.

8 Moving on to -- and we hope not to have to put the
9 seventy-two million dollars up, by the way. But it will be
10 part of any capital plan. We'll have to guaranty the 272.

11 Going to the next page, how did we get into this fix?
12 The Utah Bank paid cash -- on the Friday before the filing, it
13 paid 534 million dollars worth of cash to LBI. We surmise, we
14 have not been able to verify this, but what we believe is that
15 there was a major move to mobilize cash within the corporation
16 given what was happening to the liquidity that was being taken
17 by the various clearing banks in the week prior to the
18 proceeding. To generate that cash, LBI went into the Utah
19 Bank, sold them 534 million dollars worth of munis that they
20 had in inventory, securities that they had in inventory
21 which -- and 534 million was transferred from the Utah Bank to
22 LBI. LBI was instructed by the Utah Bank to take that money
23 and segregate those munis into a custodial account for the
24 benefit of the Utah Bank. That was ignored by the LBI in its
25 processing of -- in those days there was utter chaos taking

1 place during the 12th and the 15th. That was ignored and, in
2 fact, the munis were co-mingled. Rather than the munis being
3 placed in a custodial box for the benefit of Utah, they were
4 placed in the general box -- incorrectly in the general box.

5 On the 19th, JPMorgan seized all securities that were
6 in the general box adding it to their collateral base for the
7 protection of the various clearing risks that they had.
8 Immediately thereafter, a SIPA proceeding was commenced on LBI
9 so the 534 million has sort of been in limbo.

10 In November, we took the problem to the SIPA trustee
11 to explain to the SIPA trustee that the Utah Bank -- if we did
12 not receive this 534 million dollars, we were going to find
13 ourselves in serious trouble with the FDIC. SIPA trustee
14 responded that they will investigate the matter.

15 In January, the Utah Bank -- actually, we filed a
16 claim with the SIPA trustee -- we went to the FDIC and asked
17 the FDIC if they would please file a formal complaint which
18 would, we think from a statutory standpoint, would have
19 superseded the automatic stay and thus we would have gotten the
20 534. The FDIC chose not to sue another agency so we're sort of
21 left in a -- as the pickle in the middle, if you will, between
22 two agencies who will not -- one agency who comes to us but
23 will -- the FDIC but will not go to SIPA and demand the 534
24 million dollars.

25 We filed a our accounting report on the Utah Bank

1 with the FDIC and the FDIC said you have to write that -- the
2 accountant said you have to write that 534 off until SIPA sends
3 you the cash. And thus, we find ourselves failing the eight
4 percent capital adequacy test down into the five plus percent
5 range. The FDIC has notified us that unless we get that up
6 into the eight percent range as of February 20th that they
7 would -- we should expect that they will seize the bank.

8 Moving on, what we propose, Your Honor --

9 THE COURT: Can I stop you just for one second,
10 please?

11 MR. MARSAL: Yes. Yes.

12 THE COURT: This is all happening on an expedited
13 schedule. I just want to confirm whether or not the FDIC is
14 represented in court today. Apparently not. So I accept your
15 representation that, in fact, February 20th represents a real
16 draconian deadline and that there's no opportunity for further
17 extension of that deadline. And its seizure represents a
18 material risk absent the relief that's being sought.

19 Additionally, I would note that you made a number of
20 statements of LBHI's legal position concerning this matter. I
21 also understand that some litigation is at least a possibility
22 if the matter is not resolved. To the extent that you've made
23 those statements and there's anyone who wishes to cross-
24 examine, I'm just going to state this is not the time for that.
25 And I assume that anything that you've said which is subject to

1 further clarification or contradiction will be available for
2 such good faith litigation at the appropriate time in the
3 future. And just because nobody is questioning you now does
4 not mean that I am absolutely determining what you've said to
5 be true. I know that you believe it to be true. But I also
6 understand that this is a very complicated matter. So I just
7 wanted to make that clear.

8 MR. MARSAL: Thank you. In terms of the Utah Bank's
9 solution, Your Honor, what we propose to do is to infuse 200
10 million dollars basically in a participation -- by purchasing a
11 participation in the muni obligation. So that if and when that
12 muni obligation gets satisfied, what would happen is the first
13 200 million dollars to come back would come back to the estate
14 assuming the eight percent capital level is being maintained.
15 To the extent that that is not maintained, we could not pull
16 the money out of that. We couldn't find ourselves into a
17 default or inadequacy position by virtue of doing it.

18 We believe this will satisfy the FDIC in terms of the
19 Utah -- in permitting the Utah Bank to continue to operate. In
20 order to operate at a higher level, in order to begin to try
21 and match -- to try to issue CDs and try and match the runoff
22 of the liabilities with the runoff of the assets, we have to
23 get it to a ten percent capital adequacy level. We're working
24 on a capital plan to figure out how we do that. And we'll be
25 back to the court probably with a solution down the road but

1 it's not the emergency that today is. But we'll be working
2 with the FDIC to figure out how we can best match the liability
3 runoff with the asset runoff so we can liquidate this estate in
4 a sensible way.

5 In other actions which are being taken, we continue
6 to reduce the unfunded which reduces the risk to the FDIC. I
7 think that they're pleased with that runoff. We have some
8 ideas on how we can expedite that but I think that process
9 continues.

10 I've covered the long term plan. If we go to the
11 next page, moving to the next bank, which is the Thrift, this,
12 again, was in support of our mortgage banking and servicing
13 operations. The Thrift has 6.5 billion in assets, six billion
14 of liabilities, roughly a half a billion in equity. There's
15 less mark-to-market opportunity here, Your Honor, but -- there
16 is a small amount but this is probably closer to real value,
17 460 -- or half a billion dollars is closer to the real value
18 here. The value on the Utah Bank, again, is probably
19 understated by as much as a half billion dollars.

20 The actual capital in this bank is 5.9 million --
21 excuse me, 5.9 percent. This, too, is required -- the FDIC
22 requires eight percent. We'll need 185 million to be infused
23 in order to meet the capital adequacy test. The office of the
24 Thrift has issued a directive for us to restore this capital.
25 We have, in this case, until the 28th of February to find a

1 solution. We've submitted a plan to solve this problem. We
2 think this plan will prove to be acceptable to them. And a
3 failure to reach an agreement with them will result in, we
4 believe, a seizure of the bank. And the banks are cross-
5 defaulted to one another. So the seizure of the Thrift would
6 result in the seizure of Utah.

7 The solution, which is on page 8, is to put in 185
8 million in capital but very little of it being cash. First of
9 all, the Thrift owes Holdings ninety-three million dollars
10 related to the profits on servicing rights. And again, not to
11 be controversial because, in fairness, I think some of the
12 Thrift people might argue until we get matters straightened
13 out, we're not accepting that this is a real liability or not.
14 But we believe it's a liability and, in fact, it's on the
15 Thrift's books for ninety-three million dollars. So what we're
16 proposing to do is to take the ninety-three million and simply
17 convert that payable, with all the controversy surrounding it,
18 into capital. The capital would be, again, -- it would be
19 Holdings capital being converted into Thrift equity.

20 In addition, we would contribute eighty-nine million
21 of servicing rights which are owned by Holdings but which are
22 really tied very closely to the Thrift. And in the event that
23 the Thrift were seized, it would be a difficult realization on
24 the eighty-nine million dollars. So we think that's a -- and
25 also a reasonable give-up in terms of a capital infusion. In

1 order to top it off, we would need somewhere between three to
2 fifteen million dollars of additional cash in order to get up
3 to the 185 million dollar level. It's a little -- the reason
4 it's a range is because some of these values may shift around
5 but that gives us a pretty good -- that gives us enough room to
6 deal with just about anything.

7 Again, here, with the Thrift, we need to develop a
8 long term capital plan. It would be our objective to get up --
9 get beyond the ten percent threshold and figure out a game plan
10 by which we could match the liquidation of the asset book with
11 the liabilities. Again, we just believe that we'll do a better
12 job on a liquidation than the FDIC will in both of these
13 properties. But the intention, Your Honor, at this stage, the
14 intention is to have an orderly liquidation of the portfolio, a
15 repayment of a hundred percent of the liabilities to the
16 various parties and the estate would derive the residual
17 equity.

18 In terms of page 9 -- lays out the economics of this.
19 To the extent that there would be an FDIC -- if we look at the
20 top column -- I mean, if you look at the horizontal, you have
21 Utah Bank, Thrift and Total. Down the vertical axis, we see
22 Assets, Holdings Equity, the proceeds that we would realize, we
23 believe, from our managing it versus the FDIC's managing it and
24 this is not -- this is just, I think, again, we would manage it
25 over a longer term. They would manage it in a more immediate

1 way which would result in a discount and we think an
2 unnecessary discount. What we've assumed here is that we would
3 realize basically a hundred percent on the mark-to-market
4 values. The FDIC, we're assuming, would realize seventy
5 percent of mark-to-market values thus resulting in a deficiency
6 claim on the Utah Bank, hypothetical deficiency claim of
7 somewhere between of approximately 1.2 billion for Utah, 1.5
8 billion for the Thrift for a total of 2.7 billion in
9 hypothetical deficiency claims.

10 Turning the page, what's a deficiency claim? What's
11 the relevance of this deficiency claim? We believe that the
12 deficiency claim could be characterized one of two ways, either
13 an unsecured deficiency claim which would be added to the
14 Holdings' deficiency which would be added to the Holdings'
15 unsecured claim pool. Or, it could be traded as a priority
16 claim under statute. Now that will be a subject, hopefully,
17 that we can avoid but that is a potential litigation down the
18 road as well as to what the treatment of this claim would be.
19 What we attempted to do is not to argue it out here but rather
20 to lay out what best case and worst case would be for the
21 estate. Best case for the estate would be for this claim to be
22 treated as a deficiency claim at applying a value of ten cents
23 on the dollar to that deficiency claim. This would result in a
24 cost to the estate of 1.2 billion dollars.

25 THE COURT: Now, for purposes of this illustration --

1 MR. MARSAL: Yes.

2 THE COURT: -- I assume that the ten percent is just
3 that, for purposes of the illustration --

4 MR. MARSAL: Just that.

5 THE COURT: -- and is in no way predictive of what
6 unsecured claims may ultimately fetch in this case.

7 MR. MARSAL: Correct, Your Honor, and I should have
8 said that. This is just -- we had to have an illus -- we had
9 to have a number. So we chose a number that was basically the
10 last trading that we -- sort of a weighted average of the
11 trades that seemed to be happening in today's market.

12 THE COURT: Okay.

13 MR. MARSAL: The right-hand column, worse case would
14 be for a priority claim treatment which would be a hundred
15 cents on the dollar. And under that circumstance, in addition
16 to losing the equity that we have in the two properties, we
17 would have to pay the full deficiency claim of 2.7 billion, a
18 hundred cents on the dollar. That would result in a 3.6
19 billion dollar loss to the estate. So it is a huge matter to
20 the estate. And, I mean, one of the things that it's very
21 important from my standpoint and from the estate's standpoint
22 that we get this -- that we really get this SIPA -- SIPA to
23 focus on the legitimacy of this 534 million dollars muni claim.
24 I mean, to the extent that we have that 534 million dollars, I
25 think we satisfy our capital adequacy test and it means, as you

1 can see, potentially a three billion dollar avoidance to the
2 estate, of a potential loss and recovery value.

3 This final summary on page 11, it just lays out where
4 we are. We think that, again, that the deficiency claim is a
5 reasonable estimate on an unsecured basis of the deficiency
6 claim would be a 1.2 billion dollar loss to the estate. The
7 900 million of equity plus the deficiency claim totals 1.2.
8 Worse case, we think it'll be a 3.6 billion dollar cost to the
9 estate. Now, this is opposed to our plan which is to have an
10 orderly liquidation by the estate where we think at least 900
11 million dollars will be realized. As I indicated, we think 900
12 million is on the low side. We think it's closer to 1.4
13 billion dollars as opposed to 900 million. And we would avoid
14 any payment of potential deficiency claims.

15 Last but not least, what we have to recognize is that
16 this is really an investment that's being made that would be
17 recovered as part of this liquidation. So it's an investment
18 that's being made but we should recover it all. To the extent
19 that we are wrong, then, in fact, this is not an investment but
20 it is a prepayment against the claim. So either way, we are --
21 I think either way, the decision is the right decision, that
22 that's initially confusing. We make it what --

23 THE COURT: I understand.

24 MR. MARSAL: Okay.

25 THE COURT: I understand what you've said.

1 MR. MARSAL: Okay.

2 THE COURT: I do have a question, though.

3 MR. MARSAL: Yes.

4 THE COURT: You carefully described in your
5 presentation that you believed that the arrangements that you
6 have outlined will be acceptable to the FDIC. Do you have any
7 reasonable assurance at this point that they will be accepted?
8 Because there's one concern that I have and it may be that I'm
9 seeing an issue that doesn't exist and that you've already
10 taken into account which is the cross-default aspect of this.
11 I mean, it seems to me that it's at least conceivable that you
12 might go through the steps of saving Utah only to have a
13 problem with Thrift and for the Thrift problem to cross-default
14 to Utah so that the exercise has turned out to be an exercise
15 in futility. Accordingly, what I'm concerned about is this.
16 To what extent, as you stand here now, are you reasonably
17 confident that the arrangements that you're now describing
18 will, in fact, secure both of these institutions from potential
19 adverse consequences courtesy of the regulators?

20 MR. MARSAL: The answer to that, Your Honor, the FDIC
21 has been extremely cooperative, very straightforward, and has
22 told us you keep this at an eight percent level, we will give
23 you time. If it falls below, all bets are off, things
24 deteriorate. As long as you keep it at an eight percent level,
25 we will permit you to continue with the orderly liquidation of

1 the assets. To the extent that you were to get it up to ten
2 percent and show us an adequate capital plan for the
3 liquidation, we would even consider the reissuance of CDs to
4 help you do this matching.

5 The FDIC, which insures both institutions, is very
6 cooperative. The difficulty we have is -- the OTS has -- they
7 have been a little circumspect. And one agency isn't told what
8 to do by the other agency, as you might not be surprised. So
9 the OTS, they march to their own drummer. And so, we are
10 trying to pin the OTS down as to whether or not this is an
11 unacceptable arrangement with them. We believe it will prove
12 to be. Our concern is -- I think, if Your Honor is asking the
13 question do we put the money in without a clear sign-off from
14 the OTS, my answer would be yes, even if it's a little bit of
15 a, let's say, squirrely sign-off or a circumspect sign-off on
16 the OTS because I think there's very little down side. And
17 I -- but I also think that it's very difficult for the OTS with
18 an eight percent capital adequacy in today's market to grab
19 this institution without a hue and cry (echo/gap in audio) if
20 this thing is actually adequately capitalized. So I would hope
21 that they would look at it that way. But there's no telling,
22 on the FDIC front, I have a high confidence level. On the OTS
23 front, I think our confidence level is high -- I mean, is above
24 average but it's not certain.

25 THE COURT: Okay. So there's some risk here.

1 MR. MARSAL: Yes. Yes, Your Honor.

2 THE COURT: All right. Thank you.

3 MR. MARSAL: That's it.

4 THE COURT: That was a very helpful presentation.

5 There are no objections but I just want to be assured that
6 there is no one else who may have some questions about the
7 presentation that was just made. I realize that this is
8 unusual. It's not testimony --

9 MR. PEREZ: Right.

10 THE COURT: -- it was a presentation. I don't hear
11 any -- well, wait a minute. We have counsel for --

12 MR. KOBAK: I'm here, Your Honor, for the SIPA
13 trustee. I have not really questions but a couple of comments
14 I'd like to make at the appropriate time.

15 THE COURT: Well, this is probably the appropriate
16 time.

17 MR. KOBAK: Good. Thank you.

18 THE COURT: I'm just guessing that it has something
19 to do with some of the things Mr. Marsal said about the
20 municipal securities that seem to have been lost in the
21 process.

22 MR. KOBAK: That's correct, Your Honor. James Kobak,
23 Hughes Hubbard & Reed on behalf of the SIPA trustee. Your
24 Honor, I just wanted to make it very clear. I think Mr. Marsal
25 sometimes leaves the impression that the trustee isn't focusing

1 a lot of attention on this claim or looking at it very
2 expeditiously.

3 THE COURT: I think he would just like you to look at
4 it as expeditiously --

5 MR. KOBAK: Yes.

6 THE COURT: -- as possible.

7 MR. KOBAK: Well, we are doing that. We do have some
8 questions about the transaction. In order to be a customer
9 claim, it has to have been done in the ordinary course of
10 business. In our view of some of the evidence, it looks like
11 the parties, and that includes the bank, were scrambling around
12 like crazy to find a way to set up a segregated account in
13 time. They couldn't do it so they permitted this money to be
14 deposited in the Chase account as Your Honor has already heard.

15 We've asked the bank for documents. There's been a
16 little delay in getting those documents. We're in the process
17 of reviewing them now. We do take this very seriously. Of
18 course, we have a lot of other claimants who come in and say
19 that their business -- and if it's hedge funds, their investors
20 are going to lose their life savings as well. It is a 500
21 million dollar claim. The people that instigated this was the
22 treasurer of LBI who is also a member of the board of the bank.
23 So we do think this is something that we have to examine very
24 carefully. We haven't made any determination yet. We've told
25 all the parties, including Mr. Marsal and his counsel, that we

1 do intend to try to reach our determination as soon as we've
2 got the documents and as soon as possible.

3 So I just wanted to make that very clear that there
4 is a little bit more to the issue here and that we are acting
5 as expeditiously as possible. Thank you, Your Honor.

6 THE COURT: I understand. That's a helpful
7 clarification of your position. Mr. Perez?

8 MR. PEREZ: Yes, Your Honor. Your Honor, I do have
9 two exhibits that I'd like to present to the Court. Exhibit
10 number 1 is the order to cease and desist issued by the Federal
11 Deposit Insurance Corporation against the Utah Bank. And in
12 paragraph 1, Your Honor, it says "On or before February 20, the
13 insured institution shall, in a manner acceptable to the
14 regional director of the New York regional office of the FDIC,
15 obtain sufficient capital to meet and maintain the adequately
16 capitalized level for all capital measures."

17 And then a similar document issued by the office of
18 Thrift Supervision, dated February 4th, which would be Exhibit
19 number 2, and in that circumstance it indicates the February
20 28th date to maintain the adequate capital for the Thrift, the
21 FSB.

22 THE COURT: And you would like these two documents to
23 be deemed part of the record?

24 MR. PEREZ: Yes, Your Honor.

25 THE COURT: Is there any objection to my seeing these

1 documents? Fine. You may hand them up.

2 MR. PEREZ: Thank you.

3 THE COURT: It doesn't matter. You can go either
4 way. Thanks.

5 MR. PEREZ: Thank you, Your Honor. Your Honor, just
6 one last point and perhaps a little bit extraneous. But to the
7 extent that there's -- there were issues about the municipal
8 bond, Your Honor. The Utah Bank had, in fact, had an approved
9 business plan with the FDIC which allowed it to purchase and
10 sell municipal bonds and hold them for investment. And, in
11 fact, earlier in the month of September, LBHI had injected
12 several hundred million dollars of capital into the Utah Bank
13 for the purpose of allowing them to execute on their new
14 business plan. So we believe it was in the ordinary course of
15 business, Your Honor.

16 I have nothing further to say.

17 THE COURT: Okay. Well, all self-serving statements
18 are accepted in that spirit. I recognize that everybody has
19 chartered some territory for further exploration down the road.
20 But none of that is really part of today's hearing.

21 MR. PEREZ: It isn't, Your Honor. And, Your Honor,
22 on the basis of the record, we would request that the Court
23 enter the two orders and approve the compromise.

24 THE COURT: Let me just find out if the creditors'
25 committee wishes to be heard in connection with this. I know

1 that a statement was filed yesterday on behalf of the
2 committee.

3 MR. O'DONNELL: Your Honor, Dennis O'Donnell, Milbank
4 Tweed Hadley & McCloy on behalf of the creditors' committee.
5 Yes, Your Honor, we did file a brief statement in support. And
6 as indicated in there, on balance, we believe that making this
7 investment makes sense. It was not an easy decision for the
8 committee to make. However, our advisors have been
9 significantly involved in the process from the beginning. And
10 looking at all of the pros and cons and some of the issues that
11 you yourself raised, we think that there is potentially value
12 in these banks. And letting them be seized at this point in
13 time would not ultimately redound to the benefit of all
14 creditors.

15 So again, on balance under all the circumstances with
16 things we can't predict, we think it makes sense to grant these
17 two motions.

18 THE COURT: All right. Thank you. Is there anyone
19 else who wishes to be heard at this point? Apparently not.
20 I've reviewed the two emergency motions that are being heard
21 today. And I have considered the statement filed yesterday by
22 the official committee of unsecured creditors in support of
23 these motions. Additionally, I have reviewed the written
24 presentation prepared by Alvarez & Marsal which has been
25 referenced by Mr. Marsal in his statement made to the Court.

1 And I am satisfied that there are sound business reasons that
2 support this action, the proposed action being to make
3 investments in what we've called Utah, meaning Woodlands
4 Commercial Bank, and Thrift, meaning Lehman Brothers Bank FSB.
5 My understanding is that the measures being adopted to assure
6 capital adequacy at this difficult time include, in addition to
7 capital infusions, various means to limit the exposure of these
8 institutions to unfunded obligations to fund loans to third
9 parties. As a consequence, the overall combination of both
10 capital infusion and reduction of liability is to improve the
11 capital levels of each institution.

12 Mr. Marsal did not reference in his presentation
13 anything about the fair value accounting or at least I don't
14 remember hearing it. The papers that I have read, however,
15 filed in support of this motion do reference the impact of fair
16 value accounting on the capital adequacy of both institutions.

17 Notwithstanding the fact that there are acknowledged
18 risks associated with moving forward with these transactions,
19 the presentation that has been made makes it abundantly clear
20 that the risk to the estate in not taking these measures now
21 before February 20th or February 28th, depending on the
22 institution, could result in seizure of these institutions and
23 a significant material adverse impact to the investment of LBHI
24 made indirectly in these institutions and, more critically,
25 could result in a very material deficiency claim at the LBHI

1 level measured somewhere between 1.2 billion dollars and 3.6
2 billion dollars. Those are significant numbers. And the
3 avoidance of such an obviously adverse outcome represents cause
4 for the proposed rescue of these two institutions.

5 Additionally, there is the potential, by virtue of
6 adopting these measures, of preserving LBHI's equity
7 investments in these two institutions so that, on an overall
8 basis, there is no doubt that I have that a presentation has
9 been made with no objection on the record, that this represents
10 an appropriate exercise of business judgment, not without some
11 risk, but certainly an appropriate exercise of business
12 judgment. For that reason, I'm prepared to approve both
13 motions in the form submitted. I note that one of them, I
14 think it's the motion in connection with the rescue of the Utah
15 institution has a supplement and a somewhat modified proposed
16 form of order. I have read the supplement and the proposed
17 order and I'm satisfied that, as amended, the relief requested
18 is sensible and I will approve it.

19 MR. PEREZ: Thank you, Your Honor.

20 THE COURT: Is there anything more for today?

21 MR. PEREZ: Not for us, Your Honor.

22 THE COURT: Very well. We're adjourned. Thank you.

23 MR. PEREZ: Thank you very much.

24 (Whereupon these proceedings were concluded at 10:39 a.m.)

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2 I N D E X

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4 R U L I N G S

5 DESCRIPTION PAGE LINE

6 LBHI's motion to fund a capital contribution to 27 18

7 Woodlands Commercial Bank approved

8

9 LBHI's motion to increase capital level of 27 18

10 Lehman Bank FSB and an additional contribution

11 of up to fifteen million dollars approved

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2 C E R T I F I C A T I O N

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4 I, Lisa Bar-Leib, certify that the foregoing transcript is a
5 true and accurate record of the proceedings.

6

7

8 LISA BAR-LEIB

9

10 Veritext LLC

11 200 Old Country Road

12 Suite 580

13 Mineola, NY 11501

14

15 Date: February 18, 2009

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